IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION Nos.27827 OF 1995 AND 28220 of 1996

WRIT PETITION No.27827 OF 1995

Between:

Syed Afzal

..... PETITIONER

AND

The Commissioner,
MCH, Near Tank Bund,
Hyderabad and another.

....RESPONDENTS

WRIT PETITION No.28220 OF 1996

Syed Afzal

..... PETITIONER

AND

The Commissioner,
MCH, Near Tank Bund,
Hyderabad and others.

....RESPONDENTS

THE HON'BLE MR JUSTICE J.CHELAMESWAR

W.P.Nos.27827 OF 1995 AND 28220 of 1996

C O M M O N O R D E R

Writ Petition.No.27827 of 1995 is filed with a prayer as follows:

> **"… Honourable Court may be pleased to issue a Writ of Mandamus declaring the Notification dated 2-8-1995 published in A.P. Gazette No.336, Part-I Extraordinary at pages 2 and 3 as void and declaring as null and void and the further notification dated 23-11-95 published in A.P. Gazette No.41 at page 1040 issued by the Respondents acquiring my land to an extent of 418 Sq. Yards Ward No.7, Block No.I situated at Srinivasanagar Colony East, Ameerpet, Hyderabad and bounded by NORTH: 40' Feet Wide Road from Saradhi Studios to Balkampet; SOUTH: Building on Plot No.11 on of East Srinivas Nagar Colony; EAST: Open filed and fancing; West: Building of Md.Afzal; or to issue any other Writ or Direction as may be deemed appropriate and pass such other order or orders as are deemed fit and proper.**

Writ Petition.No.28220 of 1996 is filed with a prayer as follows:

> **"… Honourable Court may be pleased to issue a Writ of Mandamus declaring the A.P.Slum Improvement (Acquisition of Land) Act of 1956 (A.P. Act 33 of 1956) and the Notification dated 2-8-1995 published in A.P. Gazette No.336, Part-I Extraordinary at pages 2 and 3 as void and declaring as null and void and the further Notification dated 23-11-1995 published in A.P. Gazette No.41, at page 1040 issued by the Respondents acquiring petitioner's land to an extent of 418 Sq. yards in Ward No.17, Block No.I situated at Srinivasanagar Colony East, Ameerpet, Hyderabad and bounded by :**
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> **North : 40' wide road from Saradhi Studios to Balkampet.**
> **South : Building on Plot No.11 of East Srinivasa Nagar**

Colony.
East : Open field and fencing.
West : Building of Md.Afzal.

and to set aside the Patta Certificates issued by the 4th Respondent to Respondents 6 to 36 or to issue any other writ or direction as may be deemed appropriate and pass such other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case."

The petitioner is same in both the writ petitions. He claims to be the owner of an extent of 1,000 square metres of land in Sy.Nos.25, 26 and 30 situated in Ameerpet Village, Hyderabad, having derived the title from one Smt.Rahmat Khatoon. The fact that the abovementioned Rahmat Khatoon is the owner of the property is admitted by the first respondent in para 4 of the counter-affidavit dated 9th December, 1997, which was filed in W.P.No.28220 of 1996. The respondents issued a Notification under Section 3(1) of A.P. Slum Improvement (Acquisition of Land) Act, 1956 (for short 'the Act') declaring that an extent of 418 square yards to be a slum, which is a part of the abovementioned property of the petitioner. The said notification was published in the A.P.Gazette, Part-I, Extraordinary, dated 2nd August, 1995. Subsequently, a notification under Section 3(2) of the Act came to be published in the Gazette on 23rd November, 1995. Challenging the said two notifications, Writ Petition No.27827 of 1995 came to be filed. From the record, it appears that while admitting Writ Petition No.27827 of 1995, this Court granted interim stay in WPMP No.34348 of 1995 on 11.12.1995, which reads as follows:

"Pending further orders in this petition, there shall be stay of all further proceedings including allotment of the petitioner's land admeasuring 418 Sq. Yards in Ward No.7, Block No.I situated at Srinivasanagar Colony (East), Ameerpet, Hyderabad, pursuant to the notification dated 2-8-95 published in A.P. Gazette Part-I Extra-ordinary No.336 at pages 2 and 3 and also notification dt.23-11-95 published in A.P.Gazette 41 at page 1040"

Writ Petition No.28220 of 1996 is filed in substance challenging the issuance of pattas to Respondent Nos.6 to 36 herein in the abovementioned extent of 418 square yards acquired pursuant to the notifications referred to

above. The admitted fact is that the abovementioned respondents have been residing in that piece of land, which is sought to be acquired. It is the assertion of the petitioner that the respondents are the licencees of the petitioner. All the respondents are served by virtue of substituted service pursuant to an order dated 14.10.2004 and proof of substituted service was recorded by this Court on 30.11.2004. Inspite of such service, the respondents 6 to 36 never chose to appear and contest the matter.

Be that as it may, learned counsel for the petitioner submitted that the notifications issued under Sections 3(1) and 3(2) of the Act are wholly illegal for the reason of non-application of mind. The notifications do not specify the reason for which the abovementioned extent of property of the petitioner is sought to be acquired.

Section 3(1) of Act authorizes the Government to declare any area to be slum, if the Government is satisfied that such an area is or may be a source of danger to the public health, safety or convenience of such neighbourhood by reason of the area being low lying or insanitary or squalid. Obviously before taking a decision to notify any area to be a slum under Section 3(1) of the Act, the Government is required to necessarily examine and place on record the reasons for notifying the area. The Government may come to the conclusion that the area is a source of danger to the public health or source of danger to the safety for the neighbourhood or convenience of neighbourhood. Such a conclusion must be based on the existence of one of the factors like the area being a low-lying one or insanitary or squalid. Both the notifications under Sections 3(1) and 3(2) of the Act simply repeated the language of the Section without any specific conclusion as to the particular clause of Section 3 under which the area is required to be declared as slum. Therefore, in my opinion there is a total non-application of mind in notifying the area in dispute as a slum and deciding to acquire the property under Section 3(2) of the Act. Apart from that, under Section 4 of the Act the purpose of such acquisition can only be two fold; that the Government holds such property acquired under its control and undertakes to clear or improve the slum area or in the alternative, the Government may transfer such land to the municipal council concerned for the purpose of undertaking either the clearance or improvement of the said slum.

Section 4(1) of the Act reads as follows:

> **4. Transfer of land in a slum area by Government**
>
> **(1) Where any land in a slum area has been acquired under this Act, the Government may either hold the land under their own control and management and undertake the clearance or improvement of the slum area or transfer the land to the municipal council concerned for the purpose of undertaking the clearance or improvement of the slum area and in the latter case, the land shall vest in such municipal council.**

From the facts narrated above, obviously the Government never intended to clear the slum as admittedly after the acquisition of the property in dispute, the Government decided to grant pattas in favour of the Respondent Nos.6 to 36 herein. There is no whisper in the counter-affidavits filed by any one of the officials of the respondents as to the proposed steps towards improvement of the conditions in the slum. On the other hand, the counter-affidavits filed by respondents indicated that the respondents believed that the land in dispute is excess land held by the petitioner under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and that the petitioner has not established his title over the disputed extent of property.

In view of the admission of the respondents that Smt.Rahmat Khatoon is the original owner of the property in dispute, it does not lie in the mouth of the respondent Nos.1 to 5 to dispute the title of the petitioner. The other respondents never disputed the possession of the petitioner in the counter-affidavits filed by them. In such case, the dispute regarding the title of the petitioner's property, if any, can only be raised by the abovementioned Smt.Rahmat Khatoon. The petitioner, who is a person in possession of the property, is certainly a person interested within the meaning of the said expression in the proviso to Section 3-A.

It appears from the pleadings and the material available on record that the respondents acquired the property of the petitioner for the benefit of Respondent Nos.6 to 36, which exercise the State is legitimately entitled to undertake, if such exercise is done in accordance with law. The A.P. Slum

Improvement (Acquisition of Land) Act, 1956, in my view, is not the law, which authorises such exercise of power for the benefit of Respondent Nos.6 to 36. The purpose of the Act as can be culled out from the scheme of the Act is wholly different. It is essentially meant for clearance of the slums. If the Government is satisfied on the rationale application of mind that the existence of such a slum is a source of danger to the public health or safety or source of inconvenience to neighbourhood, the Act does authorize the Government not to clear the slum even after acquisition, provided the Government undertakes to improve the area by taking appropriate remedial measures in the context of primary conclusion reached by the State while deciding to notify it as a slum. Appropriate remedial measures would depend upon the primary conclusion whether the existence of sum is a source of danger to the public health, safety or convenience of its neighbourhood. Unless the reason for notification is clearly established, it is not possible for the Government to take any remedial measure for improvement of the slum and remove the objectionable clause, which prompted the acquisition of the slum.

As already recorded, both the notifications under Sections 3(1) and (2) of the Act are omnibus in their proclamation. They do not specify what exactly the factors which prompted the State to take a decision to notify an area and acquire it nor does the counter-affidavits specify what are the remedial measures, which the State proposed to take to improve the slum. Looked from any angle, this is a case where there is a total non-application of mind on the part of the Respondent Nos.1 to 5 herein and it is only a colourable exercise of the power under the Act for the benefit of Respondent Nos.6 to 36.

I hasten to add here that the State in its proclaimed zeal for providing the necessary amenities to down trodden personssuch as Respondent Nos.6 to 36 herein has the necessary authority of law to make appropriate provision for granting house sites for the respondents even by way of acquiring the private property, but such acquisition must necessarily be in accordance with law and the procedure established by law.

In view of the facts recorded above, I am of the opinion that there is a clear violation of the procedure established by law in acquiring the property of the petitioner, and therefore, the writ petitions are accordingly allowed as

prayed for. There shall be no order as to costs.

However, it is made clear that the result of these writ petitions does not in any way decide the title of the property, nor the right of the Respondent Nos.6 to 36 herein in the disputed piece of land. The question whether Respondent Nos.6 to 36 are only licencees of the petitioner or they have any other legal claim over the property in dispute, is a matter which is required to be decided by an appropriate Forum as and when either of the parties decide to approach such Forum.

JUSTICE J.CHELAMESWAR

31st JANUARY, 2007
PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR

W.P.Nos.27827 of 1995 & 28220 of 1996

31st JANUARY, 2007